

REMARKS

Applicant, through the undersigned, wishes to thank Examiner Whiteman for the courtesy and assistance extended on behalf of Applicant during a telephone interview conducted on December 12, 2005.

In the Office Action dated September 12, 2005, the Examiner has objected to the Amendment filed June 14, 2005 for failing to comply with the format of amendment as required by 37 C.F.R. §1.173(b). The specification is objected to for allegedly failing to comply with the Sequence Rules. Claim 18 is objected to for certain informalities. Claims 16-30 are rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. Claim 20 is rejected under 35 U.S.C. §112, second paragraph, for allegedly indefinite.

This Response addresses each of the Examiner's objections and rejections. Accordingly, it is respectfully submitted that the present application is in condition for allowance. Favorable consideration of all pending claims is therefore respectfully requested.

Regarding the objection to the format of the amendment, Applicant respectfully submits that the instant amendment to the specification and the claims, all made relative to the patent, is in full compliance with the requirements set forth in 37 C.F.R. §1.173(b). The text to be deleted from the patent specification is indicated by brackets instead of strike-through. Applicant has also provided the status of all patent claims and all added claims, as well as support for the changes made relative to the patent claims.

Regarding the objection to the disclosure, Applicant has amended the specification to insert the corresponding sequence identifier in the description of Figure 1. As such, the objection to the specification is overcome.

Regarding the objection to claim 18, Applicant has corrected the grammatical error in claim 18.

Regarding the written description rejection, the Examiner states that the specification provides written description for an ITR comprising SEQ ID NO: 1, but does not provide written description for limiting the ITR to SEQ ID NO: 1. However, during the telephone interview on December 12, 2005, the Examiner indicated to the undersigned that the Examiner has reconsidered the issue and the rejection will be withdrawn.

Regarding the indefiniteness rejection of claim 20, Applicant has deleted the phrase "non-biologically functional protein", and has instead characterized the heterologous gene as a "hybrid gene". Support for instant claim 20 is found in the specification, e.g., at col. 7, lines 15-19. During the telephone interview on December 12, 2005, the Examiner indicated that such recitation would be acceptable.

Finally, Applicant respectfully submits herewith a newly executed reissue declaration, which states that all errors being corrected in the instant reissue application arose without deceptive intention on the part of Applicant.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,


Kenneth L. Cage
Registration No. 26,151

McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
Tel: (202) 756-8363
Enc.: Declaration.